



CITY OF DANBURY
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ZONING COMMISSION
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MINUTES
MAY 25, 2021

The regular meeting was called to order by Chairman Theodore Haddad Jr. at 7:30 PM.

Present were Sidney Almeida, Candace Fay, Theodore Haddad Jr., Ryan Hawley, Angela Hylenski, Rick P. Jowdy (arrived at 8:30 PM), Robert Melillo, and Alternate Jason Eriquez. Also present was Planning Director Sharon Calitro.

Absent were James Kelly, Michael Masi, and Alternates Nelson Merchan Jr. & Thomas Nejame.

Chairman Haddad asked Mr. Eriquez to take Mr. Kelly's place for the items on tonight's agenda. He said since the other alternates were not present, they would go ahead with a seven-member board.

Mr. Melillo led the Commission in the Pledge of Allegiance.

Mrs. Hylenski made a motion to accept the May 11, 2021 minutes. Mrs. Fay seconded the motion and it was passed unanimously by voice vote with seven ayes (from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Melillo, Mr. Eriquez, and Chairman Haddad).

PUBLIC HEARINGS:

Mrs. Calitro read the legal notice for both public hearings.

Petition of Berkley Insurance Company/Encompass Health CT Real Estate LLC to Amend the Master Plan of The Reserve for Tax Assessor's lot #B15005 (Amend Phase 9B, Non-Residential Uses Not Serving the Immediate Needs of the Residential Development, from 100,000 SF of commercial use to 100,000 SF as a Physical Medical Facility-In-Patient Use.) MARCH SUBMISSION.

Chairman Haddad recused himself from this petition and left the meeting. Since the Vice-Chairman was not present, he asked Mr. Melillo to take over as Acting Chairman.

Acting Chairman Melillo read the Planning Department staff report dated April 29, 2021 and the Planning Commission recommendation which was positive. He also read the recommendation from WestCOG which was the standard response: *"the proposal is of local interest and with minimal intermunicipal impact, therefore it is not being forwarded to adjacent municipalities and the regional staff is making no comment."*

Speaking in favor of this petition was Attorney Ward Mazzucco. He said that with him were Edmund Ball, Patrick Tuer, both from Encompass Health, and PE Erik Lindquist from Tighe & Bond. Attorney Mazzucco said the subject property consists of 13.8 acres and is located on Parcel 9B in The Reserve. He referred to an aerial plan of The Reserve pointing out this location. He showed a rendering of the proposed building and then a site plan which will go on to be reviewed administratively by the Planning Department. He then asked project engineer, Erik Lindquist, to speak briefly about the site plan.

Mr. Lindquist pointed out specific details on the proposed plan such as access/egress, parking spaces, landscaping, and described the surrounding immediate area. He said this is a simple site plan and the building was designed to be very similar to the previously proposed office building. He said there are wetlands on the site but this will not disturb them at all, and he noted that the Environmental Impact Commission (EIC) had approved the plans on April 14, 2021. He said a smaller size building will be constructed and eventually expanded to the 100,000 sq.ft. size. Lastly, he said this use will generate less traffic than the office building would have, so it should not impact the overall traffic in this area.

Attorney Mazzucco then referred to his PowerPoint presentation and said that the current owner, Berkley Insurance Company has agreed to sell this parcel to the applicant. Berkley had been granted approval to construct a 100,000 sq ft office building on this parcel. The current proposal is to construct an in-patient Physical Medical Facility of the same size. Encompass is the nation's leading provider of in-patient rehabilitation services and operates 139 rehabilitation hospitals across the country. Encompass provides physical, occupational and speech therapy to patients who have suffered from an acute event such as a stroke or heart attack. They do not offer drug, alcohol, or mental rehabilitation. Attorney Mazzucco said patients receive 24/7 nursing care and undergo intense physical rehabilitation everyday they are there. He added that the average stay is thirteen days. He said the purpose of this petition is to amend the Master Plan for The Reserve to allow this use. He added that there was a previous petition approved to add the definition (physical medical facility, in-patient) to the Zoning Regulations. He said they are in the process of applying for a Certificate of Need from the State Department of Public Health. He said there are national statistics demonstrating that there is a need for this specific use. He said in conclusion, this is consistent with the Plan of Conservation & Development (POCD), it meets the purpose and intent of the PND zone, and it will not negatively impact the health, safety and welfare of the general public. He offered to answer questions from the Commission.

Ms. Hylenski asked how long it takes to get the Certificate of Need approved by the State. Attorney Mazzucco said their application has been pending for a while and they hope to receive approval by fall of this year. Mr. Tuer said the different types of facilities that get approved depend on the demand. Mrs. Fay asked what kind of jobs this will bring to the area. Mr. Tuer said a wide range of non-clinical as well as clinical staff will be needed to operate the facility. Mrs. Fay then asked how this is different from a rehab facility. Mr. Tuer said it is completely different because when the patient is released, they are able to go home and take care of themselves versus being transferred to a nursing home. He added that Connecticut is one of the most "under-bedded" areas with respect to filling the need for this type of rehab.

Acting Chairman Melillo asked if there was anyone else to speak in favor of this. Paul Rotello, 11 Linden Pl., City Councilman for the 6th Ward, said although this is a legislative issue, it was helpful to see the site plan because it shows the applicant is sensitive to the existing residents of The Reserve. Acting Chairman Melillo pointed out that this really is site specific because they

are asking to amend the Master Plan for The Reserve. Attorney Mazzucco said the rendering and site plan were included to show the building, not for site plan review. Mr. Lindquist added that the rendering is not exact and the site is set down, so the building will not show as much.

Acting Chairman Melillo asked if there was anyone to speak in opposition and there was no one. He then asked Mrs. Calitro if she had any additional staff comments and she said she had none. Attorney Mazzucco thanked everyone for their time and said this will be good for the community and will offer a much-needed medical service to the area.

Mrs. Fay made a motion to close the public hearing. Mr. Almeida seconded the motion and it was passed by voice vote with six ayes (from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Eriquez, and Acting Chairman Melillo) and three members not voting (Chairman Haddad, and two absences).

Acting Chairman Melillo said since there are only six members present for this hearing, he asked Attorney Mazzucco if he wanted to wait for more members before taking a vote. Attorney Mazzucco said they could go ahead and vote with a six-member board as the applicant is eager to start the site plan review process.

Mrs. Hylenski made a motion to move this petition to number one under Old Business. Mr. Almeida seconded the motion and it was passed by voice vote with six ayes (from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Eriquez, and Acting Chairman Melillo) and three members not voting (Chairman Haddad, and two absences).

Chairman Haddad returned to the meeting at this time and Mr. Melillo returned the Chair to him.

Petition of Newtown Road LLC/Maria & Manuel Andre, Whitney Avenue (K12254) for Change of Zone from RA-8 to CG-20. MARCH SUBMISSION.

At this time (8:30 PM), Mr. Jowdy joined the meeting.

Chairman Haddad noted that Mrs. Calitro had read the legal notice earlier in the evening before the previous public hearing. He then read the Planning Commission recommendation which was negative. Mrs. Calitro read the Planning Department staff report dated April 29, 2021.

Attorney Neil Marcus spoke in favor of this petition. He explained that the applicant is currently before the Planning Commission for approval of a day care center to be located on Newtown Rd. The Newtown Rd. parcels currently contain an empty auto parts store and an empty house, but also included in the application is the subject property. He said the day care center is a use which is allowed in both zones, CG-20 and RA-8. The problem is that the lot area requirements conflict if they leave the properties zoned differently. He said it was suggested that they change to RA-8 parcel to CG-20, so they would only have to comply with one set of lot size requirements. He commented at length on the staff report and the Planning Commission recommendation. He said even though they both seem negative, this proposal really is a positive thing for the City. He added that it is never good zoning practice to have a zone line cut through a development on a site. He said trying to develop only the two Newtown Rd. properties will not allow for a building of reasonable size and then they have to have parking also on the site. He added that they wanted to put up their building and comply with the RA-8 zoning on that portion of the site but the Zoning

Regulations will not allow that. He said the Commission needs to look at the zone change criteria and they will see that this is the best use for all of these properties. He said any traffic issues can be controlled by the Planning Commission in the special exception approval. He said he does not agree with the staff report conclusion because no one is going to build a house on the Whitney Ave. parcel. He said if this goes down here, the whole project goes down and the City will have Manny's Auto Parts on this site for the foreseeable future.

Mr. Melillo asked Attorney Marcus if he could point out what significant changes have occurred in this area in the past 33 years since the previous zone change was denied. Attorney Marcus said the rebuilding of the Old Sorrento Restaurant which is now proposed to be converted to an IHOP. Also, the State is doing major roadwork further down on Newtown Rd. and you don't do that type of highway improvement to support a residential area, it is done to serve commercial uses. He said the roadway itself has changed the character of this neighborhood. Mr. Melillo said he did not consider the Old Sorrento to be a change because the building was reconstructed but the use remained the same.

Chairman Haddad asked if there was anyone else to speak in favor of this petition. Since there was no one, he called on Mrs. Calitro to read some correspondence. Mrs. Calitro read three letters in opposition to this application, two from Virginia Benton, 4 Whitney Ave. and one from David Case, 7 Whitney Ave.

Chairman Haddad asked if there was anyone to speak in opposition to this application.

John Esposito, 44 Fairfield Ave., also City Councilman for the 4th Ward, said this will have a tremendous impact on the residents of Whitney Ave. He said his constituents in this neighborhood are opposed and he is representing them by speaking in opposition. They already have traffic and on-street parking problems and this change will allow more traffic into this already burdened neighborhood.

Chairman Haddad attempted to call on Lammia Agoora but there was no sound. He asked that she reboot and try again.

Farley Santos, 27 Westview Dr., also a City Councilman for the 4th Ward, said he has met with the neighbors and fielded many phone calls and they are all in opposition to the proposed change. He also mentioned the significant traffic that uses Whitney Ave as a cut-through roadway. He said, of course, we all want to see a good business go in this Newtown Rd. site but not at the cost of the residential neighborhood on Whitney Ave.

Sue & Amber St.Hilaire, who live at 1 Whitney Ave., said they are both opposed and agree with all of the other opposition. They said the ongoing construction on Newtown Rd. had amplified the traffic issues and changing the zone of this property would create havoc for the neighborhood.

Dr. Lammia Agoora, said she is representing her mother, Fathia Agoora, who owns and lives at 2 Whitney Ave. She said her mother has lived there for 44 years and for a long time, it was a quiet road. She added that Whitney Ave. is a short road with signs on both ends, but it has become a short cut, where people drive way too fast. She said on the weekends, the bar (Planeta Brazil) on Newtown Rd. uses Whitney Ave. for their parking lot, by parking cars all over the road. She said they are open until two or three AM and it gets very noisy, but there is no enforcement of the noise ordinance. She showed two photos to demonstrate how bad the traffic situation gets. The residents want City Hall to do something to help them, but there is nothing done. She said

there is no on-street parking but it happens all the time. Lastly, she said she is concerned for her mother and the other residents of Whitney Ave. because there is too much traffic through there and they drive too fast. Through the Chair, Mr. Melillo noted that Dr. Agoora is a colleague of his in the school system and she contacted him today to find out how to have the chance to speak at this meeting.

Benjamin Chianese, 5 Briar Ridge Rd., said he is City Councilman for the 6th Ward, but is speaking as an individual citizen. He said also believes this is not good for the City because too much residential property is being converted to commercial use. He mentioned an article in the News-Times which stated that residential property is urgently needed to support the increase in population. He said the staff report is an excellent informative document. He said his wife and brother-in-law own 7 Whitney Ave. and they do not want to see the commercial zone creeping into this residential neighborhood. He spoke about how “zone creep” happens and said if this commercial use creeps in, it will continue down the roadway until the entire road is commercial. He questioned what will happen to the house on 2 Whitney Ave. if this is approved. He said once this is re-zoned any use permitted in CG-20 can be put on it. He said the 1988 decision is still valid and this request should not be approved.

Attorney Marcus spoke in rebuttal to the opposition’s comments saying that most of the comments from the public were addressed in his presentation. He said any worries about traffic can be controlled by the Planning Commission in their decision on the special exception and the comments that were made are all good reasons why this should be changed. He said keeping the property zoned residential will continue the problem of people driving too fast through this neighborhood. He said the property at 2 Whitney is so small that variances would be needed for any development of it. He suggested the Commission to do a site visit and look at this property. He said there is a decent project proposed that includes this property and that project is probably the best for this neighborhood. Attorney Marcus said it is in the best interest of the City to get rid of Manny’s Auto Parts on Newtown Road and replace it with an attractive site that will generate tax revenue. He said the traffic issues need to be addressed but keeping this zoned residentially is not going to improve them.

Mr. Almeida made a motion to close the public hearing. Mr. Melillo seconded the motion and it was passed unanimously by voice vote with eight ayes (from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Jowdy, Mr. Melillo, Mr. Eriquez, and Chairman Haddad) and one member not voting (regular member absence).

Through the Chair, Mr. Melillo explained to the Whitney Ave. residents that no action would be taken on this petition tonight. The hearing is closed so no new information can be submitted and this petition will be considered as Old Business at the next regular meeting on June 8, 2021.

OLD BUSINESS:

Chairman Haddad excused himself and turned the Chair over to Mr. Melillo. Mr. Jowdy excused himself and said he is not eligible to vote as he was not present for the public hearing.

Petition of Berkley Insurance Company/Encompass Health CT Real Estate LLC to Amend the Master Plan of The Reserve for Tax Assessor’s lot #B15005 (Amend Phase 9B, Non-Residential Uses Not Serving the Immediate Needs of the Residential Development, from 100,000 SF of commercial use to 100,000 SF as a Physical Medical Facility-In-Patient Use.) MARCH SUBMISSION.

Mrs. Hylenski made a motion to approve this petition for the following reasons:

- (1) The proposed amendment is consistent with the Plan of Conservation & Development (POCD), the Revised 2004 Master Plan, and the purpose for which the site was rezoned to the PND zone.
- (2) The proposed development is in substantial harmony with the surrounding area and will not result in any deleterious impacts to the site or on the health, welfare, and general safety of the public.
- (3) The existing and proposed streets are adequate to support anticipated traffic volumes at acceptable levels of service. Municipal sewer and water service adequate to serve the proposed development can be provided. Environmentally sensitive areas will be adequately protected as the EIC issued approval of the plans earlier this year.

Mrs. Fay seconded the motion and it was passed unanimously with six ayes (from Mr. Almeida, Mrs. Fay, Mr. Hawley, Mrs. Hylenski, Mr. Eriquez, and Acting Chairman Melillo) and three members not voting (Chairman Haddad, Mr. Jowdy, and one absence).

Chairman Haddad returned to the meeting at this time and Mr. Melillo returned the Chair to him. Chairman Haddad asked if there was anything to discuss under Other Matters and there was nothing. He then said that there is one petition listed under For Reference Only which is scheduled for public hearing at the June 8th meeting.

At 10:10 PM, Mr. Jowdy made a motion to adjourn. Mr. Almeida seconded the motion and it was passed unanimously by voice vote.

Respectfully submitted,

JoAnne V. Read
Planning Assistant